

The defendant was therefore held entitled to justify under this mortgage.

Semble.—That there was evidence to show that the plaintiff recognized the defendant's title as assignee.

Dixon (of Lindsay) for the plaintiff.

William Mulock for the defendant.

WALTON V. CORPORATION OF THE COUNTY OF YORK.

Appeal—Appeal allowed—Disposal of rule nisi in court below.

In an action for negligence in not keeping in repair a county road, the jury found for the plaintiff. A rule *nisi* having been subsequently obtained to enter a non-suit, on the ground that no actionable negligence had been proved, and also for a new trial on the merits, this court made the rule absolute to enter a non-suit. On appeal to the Court of Appeal the court allowed the appeal, and directed the rule *nisi* to enter the non-suit to be discharged, but stated that as to that part of the rule *nisi* in which a new trial was asked they made no order, but left it to be disposed of by this court. On motion to this court to dispose of the matter,

Held, (WILSON C.J., dissenting) that this court could not now interfere. That the said rule *nisi* was completely and finally disposed of, so far as this court was concerned, by the rule making it absolute to enter a non-suit, and if the defendants had desired to have the question of the new trial reserved, in case of an appeal on the non-suit disallowed, that should have been done at the time.

Donovan, for the plaintiff.

J. K. Kerr, Q. C., for the defendants.

VANDERLIP V. SMYTH.

Road Company—Check gate—Authority to erect.

The plaintiff, a stage driver, residing in the town of Thorold, was in the habit of plying and driving St. Catharines, Thorold and Suspension Bridge Road Company's passengers over that part of the road—a company incorporated under C. S. U. C. ch. 49, and previous Acts—between Thorold and the terminus of the St.

Catherines-street railway (laid down on the line of the road) a distance of about two miles. There was a principal toll-gate beyond the terminus of the street railway, and another in the opposite direction beyond the plaintiff's starting point, the distance between them being nearly three miles. The defendant, who was the lessee and manager of the road, erected a check-gate across the road at a point within the space travelled by the plaintiff, distant 22 chains 53 links from the street railway terminus, and 41 chains and 40 links from the gate beyond, and then enforced payment of toll on the plaintiff, giving a ticket which entitled the holder to pass through the gate beyond.

Held, that the statute conferred the power to erect such check-gate.

The company consisted of some four persons, two of whom, F. and another, personally signed an authority to the defendant to erect the gate, and F. signed for the other two under a power of attorney, for the management of their estate, which though very full in its terms, did not specially refer to this road, but after action commenced these other two persons ratified and confirmed F.'s act by endorsement on the back of the authority.

Held, sufficient.

McClive, for the plaintiff.

Bethune, Q. C., for the defendant.

RE MEAD AND CREARY & THE DOMINION LOAN AND SAVINGS CO.

Division Courts—Garnishing debt—Amount beyond garnishee's jurisdiction—Notice—43 Vic. ch. 8, sec. 14—Construction of.

Held, that a primary creditor having a claim against a primary debtor within the jurisdiction of the Division Court can garnish a debt due by a third person to the primary debtor as to which, as between the primary debtor and the garnishee, a suit could not be maintained in the said court by reason of the amount being in excess of the jurisdiction.

Held, also, that the notice mentioned in sec. 14 of 43 Vic. ch. 8, O., refers to suits otherwise of the proper competence of the Division Court, but which have been brought in the wrong division, and that the section does not operate to give jurisdiction in default of notice as to